1939. File No. 3903/36

A CLASS

P.W. DEPARTMENT
& BRANCH

Subject:— Official Documents.

Procedure to be followed when a Govt Servant is summoned by a Court to produce ——— for the purpose of giving evidence.

A I K 51

To R.

File No. 3903/36

Std. Sedt., Slip 24-B

Correspondence

G.P.K.—J H 3—50,000—5.54
G. R. G. D No. 2108; dated 22-6-22.]

Sectt 78 A e

DOCKET SHEET (B)

Subject:—

File No. 3903/36

P. W. DEPT.

E BRANCH.

References:—

Date.	To whom sent.	Notes instructions,

Official Documents.
Procedure to be followed when a Government servant is summoned by a Court to produce - for the purpose of giving evidence.

GOVERNMENT OF BOMBAY.

HOME DEPARTMENT.

Resolution No. 7060/3.

Bombay Castle, 25th August 1939.

Read Government Resolution, Home Department, No. 7060/3, dated the 15th November 1930.

RESOLUTION. - Government is pleased to issue the accompanying instructions for the guidance of Government servants when they are summoned by a Court to produce official documents for the purpose of giving evidence.

By order of the Governor of Bombay,

D.T. JOSHI,

Under Secretary to the Government of Bombay,
HOME DEPARTMENT.

To

The Registrar, High Court, Appellate Side, Bombay (by letter).
The Prothonotary and Senior Master, High Court, Bombay (by letter).
All Commissioners of Divisions.
All District Magistrates.
All District Judges.
The Chief Presidency Magistrate, Bombay.
The Accountant General, Bombay.
All other Heads of Departments under the several Departments of the Secretariat.
All Departments of the Secretariat.

No. of 1939.

Copy forwarded for information and guidance to

Accompaniment to Government Resolution, Home Department, No. 7060/3, dated the 25th August 1939.

Procedure to be followed when a Government servant is summoned by a Court to produce official documents for the purpose of giving evidence.

The law relating to the production of unpublished official records as evidence in courts is contained in sections 123, 124 and 162 of the Indian Evidence Act, 1872 (Act I of 1872), which are reproduced below :-

"123. No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

124 .....

124. No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.

162. A witness summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided by the Court.

The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility.

If for such a purpose it is necessary to cause any document to be translated, the Court, may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence: and, if the interpreter disobeys such direction, he shall be held to have committed an offence under section 166 of the Indian Penal Code."

2. For the purposes of section 123 above, the expression "officer at the head of the department" may be held to mean the head of the office in whose custody the document required by the courts is, and vis-a-vis the court which demand its production, that officer should be treated as the authority to withhold or give the necessary permission.

3. In respect of documents emanating (1) from a higher authority, viz., His Majesty's Government, the Secretary of State for India, the Government of India, or the local Government, or which have formed the subject of correspondence with such higher authority , or (2) from other Governments, whether foreign or Dominion, the head of the department should obtain the consent of Government through the usual official channels before agreeing to produce the documents in court, or allowing evidence based on them, unless the papers are intended for publication, or are of a purely formal or routine nature when a reference to higher authority may be dispensed with.

4. In the case of papers other than those specified in paragraph 3 above, the head of the department should not allow production of the correspondence if it relates to matters which are generally regarded as confidential, or disclosure of which would in his opinion be detrimental to public interests, or to matters which are in dispute in some other connection, or have given rise to a controversy between Government and some other party.

5. In a case of doubt the head of the Department should invariably refer to higher authority for orders.

6. These instructions apply as well to cases in which Government is a party to the suit. In such cases much will depend on the legal advice as to the value of the documents, but before they are produced in court, the considerations stated above must be borne in mind, and reference to higher authority made, when necessary.

7. The Government servant who is to attend a court as a witness with official documents should, where permission under section 123 has been withheld, be given an order duly signed by the head of the department in the accompanying form.

He .....

He should produce it when he is called upon to give his evidence, and should explain that he is not at liberty to produce the documents before the court, or to give any evidence derived from them. He should, however, take with him the papers which he has been summoned to produce.

8. The head of the department should abstain from entering into correspondence with the presiding officer of the court concerned in regard to the grounds on which the documents have been called for. He should obey the court's orders and should appear personally, or arrange for the appearance of another officer in the court concerned, with the documents, and act as indicated in paragraph 7 above, and produce the necessary certificate if he claims privilege.

Order.

Summons from the Court of the for the production at of the office files relating to the

(a) I direct to appear with files mentioned in the summons and to claim privilege for them under section 123 of the Evidence Act.

(b) I also withhold permission to give any evidence derived from the files for which privilege is claimed under this order.

It should be represented to the Court that these files contain unpublished official records relating to affairs of State for the purpose of section 123 and that in view of the provisions of section 162 of the Evidence Act, the files are not open to the inspection of the Court.

Head of Department.

Dated the